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92-447

~~No. 91-8046~~

Supreme Court, U.S.
FILED
AUG 19 1992

In The

Supreme Court of the United States

October Term, 1992

REV. OTIS WILLIS, JR.,

Petitioner,

v.

THE SHERWIN-WILLIAMS CO.; JO ANN HANSON,

Respondents.

Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Rule 24.2 of the Rules of the Supreme Court provides that a brief by a respondent need not set forth the "Questions Presented for Review" unless Respondent is dissatisfied with the presentation by the Petitioner. Respondent believes that the Petitioner's questions or issues are ambiguous and complicated as phrased. Furthermore, Petitioner presents issues before this Court that are not proper for this Court to decide upon and have not been raised in the record below. Respondent contends that the only real question presented for review is:

I.

Whether the Court of Appeals was correct in affirming the District Court's decision to properly grant summary judgment to the Respondent in light of the fact that the parties had entered a Settlement and General Release Agreement and there had been an accord and satisfaction.

PARTIES

Respondents agree with the delineation of the Parties as provided by the Petitioner in the Certificate of Interested Persons in his Brief.

TABLE OF CONTENTS

Page

QUESTION PRESENTED FOR REVIEW i

PARTIES ii

TABLE OF CONTENTS iii

TABLE OF CASES AND AUTHORITIES iv

STATUTES, RULES AND REGULATIONS iv

OPINIONS BELOW 1

JURISDICTION 2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 2

FACTS OF THE CASE 4

SUMMARY OF ARGUMENT 6

RESPONDENTS' ARGUMENTS AGAINST GRANTING THE PETITION 8

I. THE SETTLEMENT AND GENERAL RELEASE AGREEMENT SIGNED BY THE PETITIONER IS A VALID, CLEAR AND UNAMBIGUOUS DOCUMENT 8

II. PETITIONER KNOWINGLY AND VOLUNTARILY EXTINGUISHED ANY LIABILITY OF THE RESPONDENT AND WAIVED HIS RIGHT TO PURSUE HIS CAUSE OF ACTION IN THE DISTRICT COURT 11

III. CONCLUSION 13

TABLE OF CASES AND AUTHORITIES

Page(s)

Alexander v. Gardner-Denver Co., 415 U.S. 36, 94 S.Ct. 1011, 39 L.Ed. 2d 147 (1974).....7, 12

Freeman v. Motor Convoy, Inc., 700 F.2d 1339 (11th Cir. 1983) 7, 12

Kaiser Aluminum & Chemical v. Ingersoll-Rand Co., 519 F. Supp. 61 (S.D. Ga. 1981).....8, 13

Kirby v. Dole, 736 F.2d 661 (11th Cir. 1984)..... 13

Strozier v. General Motors, 635 F.2d 424 (5th Cir. 1981)..... 12

United States v. Allegheny-Ludlum Industries, Inc., 517 F.2d 826 (5th Cir. 1975), *cert denied*, 425 U.S. 944, 96 S.Ct. 1684, 48 L.Ed. 2d 187 (1976)..... 13

Woodstock Road Investment Properties v. Lacy, 149 Ga. App. 593, 254 S.E. 2d 910 (1979)..... 11

STATUTES, RULES AND REGULATIONS

28 U.S.C. § 1254..... 2

Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, *et seq.* or the Age Discrimination In Employment Act, 29 U.S.C. § 621, *et seq.*.....2, 3, 4, 6, 12

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REV. OTIS WILLIS, JR.,

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v.

THE SHERWIN-WILLIAMS CO.; JO ANN HANSON,

Respondents.

Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit

BRIEF IN OPPOSITION

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit was not reported. It is attached as Appendix "A". The Judgment of that Court has been provided by the Petitioner and is attached as an Exhibit to the Petitioner's Brief. The Opinion of the United States District Court for the Northern District of Georgia was also not reported. The Opinion and Judgment are attached as Appendix "B". The Honorable J. Owen Forrester, United States District Judge adopted the Magistrate's Report and Recommendation as the Opinion and

Order of the Court. Magistrate Dougherty's Report and Recommendation is attached as Appendix "C".

JURISDICTION

Petitioner has failed to include a Statement of Jurisdiction in his Brief. Judgment sought to be reviewed was entered by the Eleventh Circuit Court of Appeals on May 14, 1992. This judgment is attached as an Exhibit to Petitioner's Brief. The Court has jurisdiction to review the judgment of the Eleventh Circuit under 28 U.S.C. § 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner has failed to provide the Constitutional and Statutory Provisions involved in this appeal.

Respondents do not agree that Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e) *et seq.* on the Age Discrimination in Employment Act, 29 U.S.C. § 621, *et seq.* pertaining to employment situations are applicable to the case at bar for the analysis of the issues presented in this case.

STATEMENT OF THE CASE

Petitioner brought this action in the United States District Court for the Northern District of Georgia against The Sherwin-Williams Company and Jo Ann Hanson, an

employee of Sherwin-Williams (hereinafter "Respondents", "Respondent Sherwin-Williams", or "Respondent Hanson"), on January 24, 1989 pursuant to Title VII of the Civil Rights Act of 1964, 47 U.S.C. § 2000 *et seq.*, and the Age Discrimination In Employment Act (ADEA), 29 U.S.C. § 621, *et seq*. Petitioner claims that he suffered this discrimination as a result of wrongful termination.

On or about April 18, 1990, Respondents filed a Motion for Summary Judgment based upon accord and satisfaction. (R18). A Settlement and General Release Agreement (hereinafter "Agreement") had been entered between Petitioner and Respondent Sherwin-Williams on March 20, 1989 which was properly executed by the Petitioner. Pursuant to that Agreement, Petitioner was paid $3,654 and his records were changed to reflect that his termination was due to the closing of the facility. Petitioner agreed to release Respondent Sherwin-Williams and its employees from all claims arising from his employment relationship. Respondents contended successfully, both at the United States District Court for the Northern District of Georgia and before the Eleventh Circuit that Petitioner had no cause of action under Title VII or the ADEA as alleged in his Complaint regardless of the underlying facts since there was an accord and satisfaction between the parties. On July 23, 1990, the United States Magistrate filed his Report and Recommendation recommending that summary judgment be granted in favor of the Respondents. (R27). On December 12, 1990, the United States District Judge received with approval and adopted the Magistrate's Report and Recommendation as the opinion and order of the Court. (R27, R30). It

was ordered and adjudged that "the Plaintiff, take nothing, the action be dismissed and the Defendant, Sherwin-Williams Company recover its cost of the action." (R30). Petitioner then filed a timely Notice of Appeal to the United States Court of Appeals for the Eleventh Circuit.

The Eleventh Circuit considered all of the Petitioner's arguments. However, the Eleventh Circuit affirmed the decision of the District Court, holding that the Petitioner was bound by his agreement and his execution of a release in which he waived all claims including those under the ADEA and Title VII, for the substantial consideration he received from Respondents. The District Court's granting of summary judgment to Petitioner was affirmed. The dispute now moves to the United States Supreme Court on Petitioner's Petition for Writ of Certiorari.

FACTS OF THE CASE

Petitioner, Reverend Otis Willis, Jr., brought this action in the United States District Court against Respondents after having pursued administrative remedies with the U.S. Equal Employment Opportunity Commission (hereinafter "EEOC") and having the administrative processing of his charge dismissed and terminated by the Commission. (R18-5). Petitioner was employed with Respondent Sherwin-Williams as a warehouseman replenisher from January 30, 1967 to November 5, 1986. Petitioner was terminated when he failed to submit an acceptable excuse for his absenteeism from the job, and

such was a reasonable basis for Petitioner's termination. (R18-5).

Petitioner filed his Complaint in the instant action on January 24, 1989. (R1). On or about March 20, 1989, Petitioner and Respondent Sherwin-Williams entered a Settlement and General Release Agreement (R18-5). Petitioner voluntarily and properly executed the Agreement with his signature. Petitioner had an opportunity to read the Agreement prior to its execution. (R18, R23). In fact, he received a copy of the Agreement and indicated that he wanted to show it to his attorney. (R23-15). He signed the Agreement only after having had a copy of it in his possession for several days, and did so in the presence of Respondent Hanson. (R23-16).

According to the Agreement, Respondent Sherwin-Williams agreed to pay Petitioner the gross sum of $3,654 as full settlement of his age discrimination claim and his claim based on the alleged violation of the company's collective bargaining agreement. (Exhibit "B" attached to R18). It is undisputed that this amount was paid to and received by Petitioner. Petitioner agreed to fully release and discharge Respondent Sherwin-Williams and its *employees* with respect to any and all claims arising out of his employment relationship. (R23). In the Agreement, Petitioner also agreed not to file suit based upon his age discrimination claim filed with the EEOC. (Exhibit "B" attached to R18). As further consideration to the Petitioner, Respondent Sherwin-Williams agreed to change Petitioner's personnel records to reflect that his termination was due to the closing of the facility instead of being

discharged. This was done by Respondent Sherwin-Williams. (Exhibit "C" attached to R18).

On April 18, 1990, Respondents filed their Motion for Summary Judgment against Petitioner on the basis of accord and satisfaction. In Petitioner's response to the Motion for Summary Judgment, he alleged that the Agreement between Respondent Sherwin-Williams and himself was "illegal, fictitious and unfounded." (R20).

The Courts below found that the Petitioner had failed to provide any evidence that this agreement was fictitious, illegal or unfounded and held that the Petitioner should be bound by its terms. (R27-6). The Courts below held that it was clear that in executing the Agreement, Petitioner waived his right to pursue his cause of action in the District Court, and that such waiver was voluntary and knowing. (R27-6).

The Eleventh Circuit held that the District Court had correctly determined that the Petitioner was bound by his Agreement and by his execution of the Agreement released and waived all claims, including those under the ADEA and Title VII for the substantial consideration he received from Respondents pursuant to the Agreement.

SUMMARY OF ARGUMENT

The case law relied upon by Petitioner in support of his Petition does not apply to the facts of this appeal. In his Brief, Petitioner cites many cases regarding illegal agreements or agreements that violate the law. However, there is not one iota of evidence to support his argument

that the Agreement he entered into with Respondent Sherwin-Williams was in any way fraudulent or in violation of any laws.

The District Court was correct in granting Respondents' Motion for Summary Judgment, ordering that the action be dismissed and that Respondents recover their cost of this action. An employee may waive his cause of action under Title VII or the ADEA as part of a voluntary settlement. *See Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 52, 94 S.Ct. 1011, 1021, 39 L.Ed. 2d 147 (1974). The Court must determine that the employee knowingly and voluntarily accepted settlement relief substantially equivalent to that obtainable under Title VII and the ADEA. The law is clear that "if an employee voluntarily releases its employer from liability with a full understanding of the terms of the settlement agreement, he is bound by those terms." *Freeman v. Motor Convoy, Inc.*, 700 F.2d 1339, 1352 (11th Cir. 1983). After filing this action, Petitioner entered into an Agreement with Respondents to settle the dispute releasing Respondent Sherwin-Williams and its employees from any liability. The language of the Agreement was definite and unambiguous. Petitioner knowingly and voluntarily waived his right to pursue this cause of action in the District Court when he signed the Agreement.

Petitioner entered into a settlement agreement with Respondents to settle all existing disputes, and payment was made to Petitioner pursuant to that Agreement. Petitioner had an opportunity to review the document and consult an attorney regarding the document prior to signing it. This evidence demands a finding of accord and satisfaction, and thus summary judgment was properly

granted in favor of Respondents and the Petitioner should not be allowed to continue this action.

In conclusion, the decisions of both the District Court below and the Eleventh Circuit Court of Appeals were correct, and should not be disturbed. Rev. Willis' Petition for Writ of Certiorari should be DENIED.

RESPONDENTS' ARGUMENTS AGAINST GRANTING THE PETITION

I. THE SETTLEMENT AND GENERAL RELEASE AGREEMENT SIGNED BY THE PETITIONER IS A VALID, CLEAR AND UNAMBIGUOUS DOCUMENT.

"A settlement agreement is a contract which is governed by principles of local law applicable to contracts generally." *Kaiser Aluminum & Chemical v. Ingersoll-Rand Co.*, 519 F.Supp. 60, 71 (S.D. Ga. 1981). Where the contract language is definite and unambiguous, the court will not resort to surrounding circumstances to interpret the agreement. *Id.* The Petitioner argues that the Agreement entered between he and Respondents was "illegal, fictitious, and unfounded." However, Petitioner has failed to provide any evidence supporting these allegations. The evidence of record supports the finding that the Agreement at issue is not ambiguous, that its terms are not illegal, and that Petitioner knowingly and voluntarily executed his signature to this Agreement, thereby extinguishing any liability of the Respondents.

In the Agreement, Sherwin-Williams expressly agreed to pay Petitioner the *gross* sum of $3,654.00 as full

settlement of claims he had filed, one of which was an age discrimination claim filed with the Atlanta District Office of the EEOC against Sherwin-Williams. Petitioner agreed not to file suit upon the allegations contained in that charge. The other claim was for alleged improper termination and violation of the company's collective bargaining agreement with the Union. Under provision 2(a) of the Agreement, Petitioner agreed to withdraw the grievance claim as fully settled and released the company.

In provision 2(c) of the Agreement, it further provides that Petitioner:

> Covenants not to sue and fully releases and discharges the Sherwin-Williams Company and its . . . *employees* . . . with respect to and from any and all claims, wages, demands, rights, liens, agreements, contracts, covenants, actions, suits, causes of action, obligations, debts, costs, expenses, attorneys fees, damages, judgments, orders and liabilities of whatever kind or nature in law, equity or otherwise, whether now known or unknown, suspected or unsuspected, and whether or not concealed or hidden, which he now owns or holds for which he has at any time heretofore owned or held as against said releasees, *arising out of or in any way connected with his employment relationship* with the company, or other transactions, occurrences, acts or omissions or any loss, damage or injury whatever, known or unknown, suspected or unsuspected, resulting from any act or omission by or on the part of said releasees, or any of them, committed or omitted prior to the date of this agreement.

(Exhibit A, ¶2(c) attached to R18, emphasis added.)

Finally, the Agreement states that "it is the intention of Willis in executing this instrument that the same shall be effective as a bar to each and every claim, demand and cause of action hereinabove specified." (Exhibit A, ¶3 attached to R18). As further consideration, Respondent Sherwin-Williams agreed to change Petitioner's personnel records to reflect that his termination was due to the closing of the facility instead of a discharge. This change was made to his records. (See Exhibit "C" attached to R18).

Clearly, the District Court was correct in determining that this Agreement was not ambiguous. The language of the Agreement clearly and definitely sets forth the consequences and obligations of the parties. There is no dispute that the Agreement was properly executed by Petitioner with his signature; that the sum of $3,654.00 to be paid by Respondent Sherwin-Williams to Petitioner was agreed upon and paid as full settlement of Petitioner's claims against Respondent company and its employees; and that as further consideration, Respondent Sherwin-Williams changed Petitioner's personnel records to reflect that his termination was due to closing of the facility. Clearly, this evidence reflects that the Petitioner knowingly and voluntarily accepted settlement relief, and is bound by the terms of the Agreement.

As Movants for summary judgment in the court below, Respondents showed that there was a meeting of the minds and that it was the Petitioner's intention to extinguish any rights of action or claims against them. Therefore, the Agreement should be found valid and

binding as against the Petitioner, and a bar to this action. Summary judgment was properly granted as to the Respondents.

II. PETITIONER KNOWINGLY AND VOLUNTARILY EXTINGUISHED ANY LIABILITY OF THE RESPONDENTS AND WAIVED HIS RIGHT TO PURSUE HIS CAUSE OF ACTION IN THE DISTRICT COURT.

"An accord and satisfaction is an agreement between two parties to give and accept something in satisfaction of a right of action which one has against the other, which when performed is a bar to *all* actions on this account." *Woodstock Road Investment Properties v. Lacy*, 149 Ga. App. 593-594, 254 S.E.2d 910 (1979). (Emphasis added). An accord is sufficiently executed only when all is done which a party agrees to accept in satisfaction of a pre-existing obligation. *Id.* at 86. Under the Agreement in the instant case, the Petitioner agreed to accept in satisfaction of any and all claims, $3,654.00 and his personnel records changed. Respondent Sherwin-Williams fully performed that which the Petitioner agreed to accept in satisfaction of his then existing claims and any and all future claims. Thus, there has been accord and satisfaction and summary judgment was properly granted in favor of the Respondents.

Not only did the Agreement between Respondents and Petitioner involve the giving and accepting of consideration in satisfaction of Petitioner's right of action, but said Agreement, clearly indicated that it was Petitioner's intention in executing the instrument that it was to be effective as a bar to each and every claim and cause of

action specified within. Thus, the Agreement having been fully performed is a bar to all actions relating to Petitioner's employment relationship with the Respondent Sherwin-Williams, including the present action. Thus, the question of whether any of Petitioner's civil rights were violated in his employment relationship with Respondent is barred from being presented to or considered by this Court.

An employee may waive his cause of action under Title VII or the ADEA as part of a voluntary settlement. *Alexander v. Gardner-Denver Co.*, 415 U.S. at 52, 94 S.Ct. at 1021, 39 L.Ed. 2d 147 (1974). To determine whether such a waiver is effective, the court must determine that the employee knowingly and voluntarily accepted settlement relief substantially equivalent to that obtainable under Title VII and the ADEA. *Id.* Where the employee voluntarily releases his employer from liability with the full understanding of the terms of the settlement agreement, he is bound by those terms. *Freeman*, 700 F.2d at 1352. This is clearly the case in the instant action.

A monetary settlement is an effective waiver where an employee knowingly receives and accepts his employer's checks for back pay awards. *Strozier v. General Motors Corp.*, 635 F.2d 424 (5th Cir. 1981). There is no dispute that this is what Petitioner agreed to. The Petitioner received and accepted a check from the Respondents in the sum of $3,654.00 minus the required deductions. His acceptance of the settlement bars this lawsuit where the remedies sought and settled was the precise remedy sought in the lawsuit. *Id.*

Petitioner cannot be permitted to sue the Respondents in the same cause of action for which a settlement was executed merely because he has grown dissatisfied with the payment for which he settled. *See United States v. Allegheny-Ludlum Industries, Inc.*, 517 F.2d 826, 858 (5th Cir. 1975), *cert. denied*, 425 U.S. 944, 96 S.Ct. 1684, 48 L.Ed. 2d 187 (1976). Public policy favors the settlement of disputes. *Kaiser Aluminum*, 519 F.Supp. at 71. If an employee who fully settles his case with the employer were allowed to sue the employer at a later date on the same cause of action, this would discourage defendants from resolving disputes outside the courtroom. *Allegheny-Ludlum*, 517 F.2d at 859. Thus, "one who agrees to settle his claim cannot subsequently seek both the benefit of the settlement and the opportunity to continue to press the claim he agreed to settle." *Kirby v. Dole*, 736 F.2d 661, 664 (11th Cir. 1984).

CONCLUSION

Respondents have shown the Court that the Agreement at issue is a valid, clear and unambiguous agreement which was voluntarily and knowingly executed by the Petitioner. Respondents have further shown the Court that under the terms of the Agreement, the Petitioner obtained the consideration that he sought. The entire basis of the Petitioner's appeal is that the Agreement was an invalid, illegal and ambiguous document. There is no evidence to support these allegations. Thus, the Petitioner should be bound by the terms of the Agreement, and the District Court and Eleventh Circuit were correct in granting summary judgment in favor of the Respondents

where there has been an accord and satisfaction. The opinion of the Eleventh Circuit should not be disturbed.

Respectfully submitted, this 19th day of August, 1992.

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All above counsel have been duly admitted to the Supreme Court for the State of Georgia, the highest Court of Record in this state.

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 91-8046
Non-Argument Calendar

D. C. Docket No. 1:89-cv-153-JOF

REV. OTIS WILLIS, JR.,

Plaintiff-Appellant,

versus

SHERWIN WILLIAMS COMPANY,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia

(February 27, 1992)

Before EDMONDSON and COX, Circuit Judges, and JOHNSON, Senior Circuit Judge.

PER CURIAM:

The record in this case reflects that the district court correctly determined that Appellant Willis is bound by his agreement and his execution of a release in which he waived all claims, including those under the Age Discrimination in Employment Act and Title VII, for the

substantial consideration he received from Sherwin-Williams.

The judgment of the district court granting summary judgment to Sherwin-Williams is AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
for the
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Otis Willis, Jr., Rev.,
Plaintiff(s)

-V- Civil Action 1-89-cv-153-JOF

Sherwin Williams Company,
Defendant(s)

JUDGMENT

This action came on for consideration before the Court, Honorable J. Owen Forrester, District Judge, presiding, and the issues having been considered and a decision having been rendered, granting defendant's motion for summary judgment.

It is Ordered and Adjudged that the plaintiff, REV. OTIS WILLIS, JR. take nothing, the action be dismissed and the defendant, SHERWIN WILLIAM COMPANY recovers its cost of this action.

Dated at Atlanta, Georgia, this 12th day of December, 1990.

Luther D. Thomas, Clerk

/s/ Lavonia Kendrick
by Lavonia Kendrick
Deputy Clerk

FILED IN CLERK'S OFFICE
December 12, 1990
AND ENTERED ON DOCKET
December 14, 1990
NORTHERN DISTRICT OF GEORGIA
LUTHER D. THOMAS, CLERK

BY: /s/ Lavonia Kendrick
Lavonia Kendrick
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

OTIS WILLIS, JR., Rev., Plaintiff,	:	CIVIL ACTION NO. 1:89-CV-0153-JOF
vs.	:	
SHERWIN WILLIAMS COMPANY, Defendant.	:	

ORDER

This matter is before the court on plaintiff's objections to the report filed by Magistrate Dougherty, acting as special master, in this Title VII action pursuant to Internal Operating Procedure Rule 920-2(a). Magistrate Dougherty's report recommends that defendant's motion for summary judgment be granted on grounds of accord and satisfaction. The magistrate concluded that a settlement agreement executed by the parties was a voluntary

and knowing waiver of plaintiff's right to sue on the claim that is the subject of the instant action.

Plaintiff has asserted no specific grounds for his objection other than his opinion that the magistrate overlooked or ignored the evidence he submitted. Plaintiff states that a reading of the settlement and release agreement by the district court will show that he should prevail on his entire complaint. The court has reviewed the settlement agreement and the record and finds that they support the magistrate's report in its entirety.

Under Fed. R. Civ. P. 53(e)(2), when a matter is referred to a special master in a non-jury action, the district court "shall accept the master's findings of fact unless clearly erroneous." When a magistrate acts as a special master, the magistrate's findings of fact "must be accepted by the district court unless clearly erroneous." *Martin v. University of South Alabama*, 911 F.2d 604, 608 (11th Cir. 1990). No plain error having been shown, the court receives with approval and ADOPTS the magistrate's report and recommendation as the opinion and order of the court.

SO ORDERED this 12th day of December, 1990.

/s/ J. Owen Forrester
J. OWEN FORRESTER
UNITED STATES
DISTRICT JUDGE

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

REVEREND OTIS WILLIS, JR.,	:	
Plaintiff,	:	CIVIL ACTION NO. 1:89-CV-153-JOF
vs.	:	
THE SHERWIN WILLIAMS COMPANY, ET AL.,	:	
Defendants.	:	

MAGISTRATE'S REPORT AND RECOMMENDATION

Plaintiff brings this action for alleged violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, and for alleged violations of the Age Discrimination and Employment Act (ADEA), 29 U.S.C. § 621, *et seq.* Specifically, plaintiff contends that he was terminated on the basis of his race and his age. In addition, plaintiff alleges that he was the victim of assault, libel, slander, and fraud.

The case is currently before the magistrate on defendants' Motion for Summary Judgment. Defendants argue that the evidence of record demands a finding of accord and satisfaction.

The following material facts are undisputed:

(1) This action has been brought by plaintiff Reverend Otis Willis, Jr. against defendants The Sherwin-Williams Company and Jo Ann Hanson pursuant to Title VII and the ADEA.

(2) Plaintiff brings this action after having pursued administrative remedies with the U. S. Equal Employment Opportunity Commission (EEOC) and having the administrative processing of this charge dismissed and terminated by the Commission.

(3) Plaintiff was employed with Sherwin-Williams as a warehouseman replenisher from January 30, 1967 to November 5, 1986.

(4) Plaintiff was terminated from that position, allegedly for failure to submit an acceptable excuse for his absenteeism from the job.

(5) Plaintiff then filed his complaint in the United States District Court for the Northern District of Georgia on January 24, 1989.

(6) On or about March 20, 1989, plaintiff and Sherwin-Williams entered into a Settlement and General Release Agreement.

(7) This Agreement was properly executed by Plaintiff with his signature.

(8) According to the Agreement, Sherwin-Williams agreed to pay plaintiff the gross sum of $3,654.00 as full settlement of plaintiff's age discrimination claim and his claim based on the alleged violation of the company's collective bargaining agreement.

(9) This sum has been paid by Sherwin-Williams to plaintiff.

(10) As further consideration to plaintiff, Sherwin-Williams agreed to change plaintiff's personnel records to reflect that this termination was due to closing of the facility instead of discharge, which has been done.

(11) In the Agreement, plaintiff agreed not to file suit upon the allegations contained in his charge filed with the EEOC.

An employee may waive his cause of action under Title VII or the ADEA as part of a voluntary settlement. *See Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 52 (1973). To determine whether such a waiver is effective, the court must determine that the employee knowingly and voluntarily accepted settlement relief substantially equivalent to that obtainable under Title VII and the ADEA. *Id. See also Strozier v. General Motors Corp.*, 422 F. Supp. 475, 481 (N.D. Ga. 1977), *aff'd* 635 F.2d 424, 426 (5th Cir. 1981) (Unit B).[1] Where the employee voluntarily releases his employer from liability with a full understanding of the terms of the settlement agreement, he is bound by those terms. *Freeman v. Motor Convoy, Inc.*, 700 F.2d 1339,1352 (11th Cir. 1983).

On March 20, 1989, plaintiff entered into a Settlement and General Release Agreement with the Sherwin-Williams Company to settle the dispute between the parties.

---

[1] The Eleventh Circuit, in the *en banc* decision *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981), adopted as precedent decisions of the former Fifth Circuit rendered prior to October 1, 1981.

(Defendant's Exhibit B). Pursuant to this Agreement, Sherwin-Williams paid plaintiff the gross sum of $3,654.00 as full settlement of the claims described in Paragraph 2 of the Agreement, regarding plaintiff's allegations that Sherwin-Williams improperly terminated him in violation of the company's collective bargaining agreement and that Sherwin-Williams discriminated against him on the basis of his age. (Defendant's Exhibit A, Affidavit of Jo Ann Hanson, ¶ 10; Defendant's Exhibit G). As further consideration to plaintiff, Sherwin-Williams changed plaintiff's personnel records to reflect that termination was due to a closing of the facility instead of discharge as was agreed in ¶ 4 of the agreement. (Hanson Affidavit, ¶ 11).

A settlement agreement is a contract which is governed by principles of local law applicable to contracts generally. *Kaiser Aluminum and Chemical v. Ingersoll-Rand Co.*, 519 F. Supp. 60, 71 (S.D. Ga. 1981). Where the contract language is definite and unambiguous, the court will not resort to surrounding circumstance to interpret the agreement. *Id.* Under Georgia law, whether a contract is ambiguous shall be determined by the court. The Agreement at issue is not ambiguous, and it clearly states that "Willis agrees to, and does hereby . . . agree not to file suit upon the allegations contained in Charge No. 110873071." (Defendant's Exhibit A, ¶ 2(b)). The Agreement further provides that plaintiff:

> covenants not to sue and fully releases and discharges the Sherwin-Williams Company . . . with respect to and from any and all claims, wages, demands, rights, liens, agreements, contracts, covenants, actions, suits,

> causes of action, obligations, debts, costs, expenses, attorneys' fees, damages, judgments, orders and liabilities of whatever kind or nature in law, equity or otherwise, whether now known or unknown, suspected or unsuspected, and whether or not concealed or hidden, which he now owns or holds or he has at any time heretofore owned or held as against said releasees, arising out of or in any way connected with his employment relationship with the company, or other transactions, occurrences, acts or omissions or any loss, damage or injury whatever, known or unknown, suspected or unsuspected, resulting from any act or omission by or on the part of said releasees, or any of them, committed or omitted prior to the date of this agreement.

(Defendant's Exhibit A, ¶ 2(c)). Finally, the Agreement states that "it is the intention of Willis in executing this instrument that the same shall be effective as a bar to each and every claim, demand and cause of action hereinabove specified." (Defendant's Exhibit A, ¶ 3). It is clear, therefore, that in executing this Agreement, plaintiff waived his right to pursue his cause of action in his court.

The undersigned magistrate CONCLUDES that plaintiff's waiver was voluntary and knowing. In his response to defendant's Motion for Summary Judgment, plaintiff alleges that the settlement agreement between Sherwin-Williams and himself is "illegal, fictitious and unfounded." Plaintiff has failed to provide any evidence supporting those allegations, however. Indeed, the evidence of record supports a finding that plaintiff knowingly and voluntarily extinguished any liability of defendants.

A monetary settlement is an effective waiver where an employee knowingly receives and accepts his employer's checks for back pay awards. *See Strozier v. General Motors Corp.*, 442 F. Supp. at 481. Plaintiff testified in his deposition that he received and accepted a check from the Sherwin-Williams Company in the sum of $3,654.00 minus the required deductions. (Defendants' Exhibit D, Willis Deposition, p. 18). Plaintiff's acceptance of the settlement bars his law suit where the remedy sought and settled was the precise remedy sought in the law suit. *Strozier v. General Motors Corp.*, 635 F.2d at 426.

In his complaint, plaintiff seeks relief in the form of back pay, front pay, attorneys' fees, and an award for pain and suffering. Plaintiff settled the aspects of the requested relief which are recoverable under the ADEA and Title VII. Plaintiff received nine weeks' back pay totalling $3,654.00. Although plaintiff did not receive front pay, such a remedy would not be appropriate where the service center at which plaintiff was employed closed soon after his discharge. However plaintiff's personnel records were changed to reflect that his termination was due to the closing of the facility instead of discharge. Since *pro se* litigants are not permitted to recover attorneys' fees, plaintiff would not be entitled to recover that amount in a law suit. *Cofield v. City of Atlanta*, 648 F.2d 986 (5th Cir. 1981). Furthermore, neither punitive nor compensatory damages are available under Title VII or the ADEA. *See, e.g., Walker v. Ford Motor Co.*, 684 F.2d 1355 (11th Cir. 1982); *Dean v. American Security Insurance Co.*, 559 F.2d 1036 (5th Cir. 1977), *cert. denied*, 434 U.S. 1066

(1978). Since plaintiff's tort claims cannot stand independently of his civil rights suit, plaintiff accepted a settlement release substantially equivalent to that obtainable under Title VII and the ADEA.

Plaintiff may not now sue defendants on the same cause of action merely because he has grown dissatisfied with the payment for which he settled. *See United States v. Allegheny-Ludlum Industries, Inc.*, 517 F.2d 826, 858 (5th Cir. 1975), *cert. denied*, 425 U.S. 944 (1976). Public policy favors the settlement of disputes. *Kaiser Aluminum and Chemical v. Ingersoll-Rand Company*, 519 F. Supp. at 71. If an employee who freely settles his case with the employer were allowed to sue the employer at a later date on the same cause of action, however, this would discourage defendants from resolving disputes outside the courtroom. *See Allegheny-Ludlum*, 517 F.2d at 859. Thus, "one who agrees to settle his claim cannot subsequently seek both the benefit of the settlement and the opportunity to continue to press the claim he agreed to settle." *Kirby v. Dole*, 736 F.2d 661, 664 (11th Cir. 1984).

In *Freeman v. Motor Convoy, Inc.*, the Eleventh Circuit held that the district court did not err in holding that the plaintiff employee was bound by the conciliation agreement he knowingly and voluntarily executed. *Freeman*, 700 F.2d at 1352. In that case, the employee testified that he read the agreement and that he consulted with an EEOC representative prior to signing the agreement. Furthermore, he obtained the relief he sought under the terms of the agreement. The court held that the employee had knowingly and voluntarily waived his right to sue his employer with respect to discrimination charges he filed with the EEOC because there was no evidence that

the employee was coerced into signing the conciliation agreement. *Id.*

Likewise, in the case at bar, there is no evidence that plaintiff was coerced into signing the Settlement and General Release Agreement. Plaintiff admits by deposition testimony that he had an opportunity to read the Agreement prior to its execution. (Defendant's Exhibits C and D, Deposition of Otis Willis, pp. 16, 18). In fact, plaintiff received a copy of the Agreement and indicated that he wanted to show it to his attorney. (Defendant's Exhibit B, Supplemental Affidavit of Jo Ann Hanson, ¶ 8). Plaintiff signed the Agreement only after having had a copy of it in his possession for several days, and he did so in the presence of Ms. Hanson. (Supplemental Affidavit of Hanson, ¶¶ 9-11; Deposition of Otis Willis, pp. 13, 18).

Accordingly, plaintiff knowingly and voluntarily executed the settlement agreement at issue. Plaintiff read and reviewed the document which he agreed to sign, and he was given the opportunity to seek legal counsel and advice regarding the Agreement. In addition, under the terms of the Agreement, plaintiff obtained the consideration that he sought. Since plaintiff has failed to provide any evidence that this Agreement is fictitious, illegal or unfounded, plaintiff should be bound by its terms. The magistrate therefore RECOMMENDS that summary judgment be GRANTED in favor of defendants.

RECOMMENDATION

Accordingly, for the foregoing reasons, summary judgment should be GRANTED in favor of defendants.

SO REPORTED AND RECOMMENDED, this 23rd day of July, 1990.

/s/ John E. Dougherty
JOHN E. DOUGHERTY
UNITED STATES MAGISTRATE